There is no doubt that the marriage celebrated at Tellicherry between the parties in 1966 is a valid monogamous marriage. It was celebrated under section 4 of the Madras Marumakkathayam Act. By virtue of section 6 of that Act a marriage under section 4 may be dissolved by an order of dissolution as provided under section 7 of that Act whereby a husband may present a petition for such dissolution if the place where the marriage was contracted is situated within the local limits of the jurisdiction of the Court of a District Munsif.

The divorce of 2nd January 1970 was granted on this basis under section 9 of the Marumakkattayam Act which provides that:

"the court shall, on being satisfied after such inquiry as it thinks fit that a marriage which is valid under section 4 was contracted between the parties, by an order in writing declare the marriage dissolved".

The right conferred by this Act to obtain the dissolution of a Hindu marriage is not affected by the Hindu Marriage Act, 1955 of India by virtue of section 29(2) of that Act.

It is quite clear that if the appellant had merely been a resident here who had obtained a divorce in India on the basis of his being domiciled there, the courts in Singapore would recognise such a divorce. That, however, is not the position in this case. The Court of the District Munsif, Tellichery, Kerala State, did not purport to exercise jurisdiction on the ground of his being domiciled there. The court clothed itself with jurisdiction because the place where the marriage was celebrated lay within its jurisdiction. It is a fact found by the magistrate that the appellant at the time he obtained his divorce in India was in fact domiciled in Singapore. The court in Singapore therefore cannot recognise such a divorce.

Counsel for the appellant invoked the relaxations to the rule based on domicile enunciated by the House of Lords in England in *Indyka* v. *Indyka*[1] to the effect that an English court would recognise a divorce granted on the basis of nationality by the court of a foreign country with which the petitioner could be said to have a real and substantial connexion.

So far as I am aware, no cases have arisen to this day in Singapore where relaxations such as these to the domicile test have been followed. It should be noted that in England no statutory provision exists such as that contained in section 80 of the Women's Charter making domicile the test for jurisdiction in divorce, the domicile test in England being only judge-made law.

It is also clear that the mere fact that a marriage was celebrated in Tellicherry would not be sufficient to create a real and substantial connexion between the appellant and Tellicherry.

Even if it can be said that, notwithstanding the statutory requirement of domicile as the test for jurisdiction in divorce, regard should be had to the principle enunciated in *Indyka's* case relating to real and substantial connexion between the parties and the foreign jurisdiction, which the appellant himself never raised before the magistrate, it is quite clear from the facts found by the magistrate in this appeal that the appellant did not, when he obtained this divorce on 2nd January 1970, possess such real and substantial connexion. He happened to be there on a short visit when he was advised by relatives that he could obtain a divorce there. It must have been quite obvious to him then that if he had commenced proceedings in Singapore he would have been unable to establish any of the grounds for seeking dissolution of his marriage to the respondent whereas, in India, under the Marumakkattayam Act, no grounds were required to be established.

There is nothing in the record to show that, on 2nd January 1970, he possessed anything other than a Singapore domicile and the facts strongly show a Singapore domicile even to this day. He is a Singapore citizen and the magistrate found, in my view quite correctly, that he had not rebutted the presumption of a Singapore domicile which arises under section 3 of the Women's Charter.

It is quite clear from all the evidence that both parties after their marriage in India came to Singapore with a view to setting up a matrimonial home here which in fact they did until matters came to a head between them which resulted in the appellant's failing to maintain her and to provide a home for her as intended.

Since the purported Indian divorce cannot be recognised it follows that the consequential order for maintenance made in India follows the same fate.

I cannot see any ground for interfering with the magistrate's order for maintenance.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

Solicitors: *J. B. Jeyaretnam & Co.; Rodyk & Davidson.*

HOTEL BILTMORE & ORS. v. CENTRAL PROVIDENT FUND BOARD

[O.C.J. (Winslow J.) November 7, 1972]

[Singapore — Originating Summons No. 165 of 1972]

Provident Fund — "Wages" — Whether "service charges" are "wages" as defined in the Central Provident Fund Act (Cap. 121), s. 2.

The question raised in this case was whether payments of certain monies distributed to the applicants' employees on a points or share system out of the service charges levied on all their customers were "wages" under the Central Provident Fund Act (Cap. 121), i.e. remuneration in money due or granted to them in respect of their employment and if so whether the applicants were liable to make central provident fund contributions on such payments.

Held: the monies in question which were deployed out of funds collected by service charges by the applicants and paid out to the employees on a points or share system did not represent monies of which the applicants were mere trustees or collecting agents for their employees. They were monies demanded from clients and they accrued to hotel revenue

in the first instance and the hotel decides — in the absence of industrial arbitration — how the amount collected should be distributed to its employees. In the circumstances they were part of the remuneration in money due to the employee in respect of his employment falling squarely within the meaning of "wages" as defined in section 2 of the Central Provident Act.

Cases referred to:-

(1) *Food, Drinks & Allied Workers' Union* v. *Hotel Malaysia Ltd.* [1972] 1 M.L.J. xiii.
(2) *The Queen* v. *Postmaster General* (1876) 1 Q.B.D. at pg. 633.
(3) *Wright* v. *Boyce* 38 T.C. 160.
(4) *Calvert* v. *Wainwright* 27 T.C. 47.
(5) *Penn* v. *Spiers* [1908] 1 K.B. 766.
(6) *Skailes* v. *Blue Anchor Line, Ltd.* [1911] 1 K.B. 36.
(7) *Reed* v. *Seymour* 11 T.C. 625.

ORIGINATING SUMMONS.

M. Karthigesu (*N. Logaraj* with him) for the applicants.

G. Starforth Hill for the respondents.

Winslow J.: The question raised in this originating summons is whether payments of certain monies distributed to the applicants' employees on a points or share system out of the service charges (5 to 10%) levied on all their customers are "wages" as defined in the Central Provident Fund Act (Cap. 121) — *i.e.* remuneration in money due or granted to them in respect of their employment — and if so, whether the applicants are liable to make Central Provident Fund contributions on such payments.

Counsel for the applicants submitted that these payments are non-contractual payments as between the applicants and their employees and accordingly are not wages within such definition. Mr. Ruosch, Vice-President of the Singapore Hotel and Restaurant Association, comprising 37 licensed hotels in Singapore, representing all the 10 applicants herein, said that these service charges are gratuitous payments made by customers to the hotel whose payment is eventually enforced on failure to pay after having been solicited in the first instance. Apparently the object of introducing the service charge was to do away with tipping which ordinarily exists on a direct personal contact basis as between customer and employee for services rendered by the employee arising out of and in the course of his employment as such. It should be noted, however, that the deployment of the service charges collected by the applicants is not confined to employees with whom customers come into direct contact.

Mr. Karthigesu stressed that these payments were purely voluntary, that they did not arise out of any contractual relationship between the applicants and the employees to whom they were paid, that they arose from monies paid by a third-party (the customer) for the benefit of the employees and were accordingly not wages within the definition so as to attract Central Provident Fund contributions.

Counsel also emphasised caution in extracting principles from the tax cases cited because the latter were concerned with the income of an employee and not with wages paid by an employer. He directed attention to the fact that section 52 of the Industrial Relations Act (Cap. 124) deals with the recovery of awards of the Industrial Arbitration Court made in respect of wages *or otherwise* and that the matters which the Industrial Arbitration Court took into account in Exhibits MR1 and MR2 (Awards in Industrial Arbitration Cases Nos. 36/1970 and 25/1971[1]) were irrelevant so far as the present issue is concerned.

Counsel for the respondent, the Central Provident Fund Board, Mr. G. S. Hill, submitted that the basic problem is: by whom were the employees paid and what was the amount which was paid to them in full? He agreed with the definition of remuneration propounded by Mr. Karthigesu, counsel for the applicants, as being "the consideration a person receives for the service he renders" He stressed that even if such remuneration is gratuitous it nevertheless remains remuneration and cited Blackburn J. in *The Queen* v. *Postmaster General*[2] in support as follows:

"But I think the word 'remuneration' is a wider term and means a *quid pro quo*. If a man gives his services, whatever consideration he gets for giving his services seems to me a remuneration for them. Consequently, I think if a person was in the receipt of a payment, or in the receipt of a percentage, or any kind of payment which would not be an actual money payment, the amount he would receive annually in respect of this would be 'remuneration,' and consequently I think that this statute, in the early part of it, must be construed to extend not only to money payment but to any payment given as a remuneration for his services in the office."

Mr. Hill adopted the arguments canvassed before the Industrial Arbitration Court in Industrial Arbitration Awards Nos. 36/70 and 27/71 even though he was aware that its conclusions were not binding on me in so far as the present issue is concerned.

He cited a number of authorities — *Wright* v. *Boyce*[3] (the huntsman's Boxing Day present), *Calvert* v. *Wainwright*[4] (tips to driver of a taxi-hire company), *Penn* v. *Spiers*[5] (waiter's earnings from tips), and *Skailes* v. *Blue Anchor Line, Ltd.*[6] (profits by purser on sale of whisky on board by nips).

I have carefully considered these authorities and it seems to me to be almost beyond argument that, by whatsoever name the tips or nip-profits or presents on Boxing Day were called, they all represented *remuneration* so long as they were monies, even paid by third-parties, for services rendered by the employee concerned by virtue of his holding such office.

As Jenkins L.J. said in *Wright's* case, *supra*, quoting Lord Cave L.C. in *Reed* v. *Seymour*: [7]

"and it must now (I think) be taken as settled that they include all payments made to the holder of an office or employment as such — that is to say, by way of remuneration — for his services, even though such payments may be voluntary — but they do not include a mere gift or present (such as a testimonial) which is made to him on personal grounds and not by way of payment for his services."

There are equally strong, if not stronger passages in the judgments, in the other cases cited. I am aware, as Mr. Karthigesu said, that one should approach decisions in tax cases and in cases involving other statutes with caution before extracting a principle therefrom and applying it to the present issue.

I have however no hesitation in holding that it is crystal clear that the monies in question which are deployed out of funds collected as service charges by

the applicants and paid out to employees on a points or share system do not represent monies of which the applicants are mere trustees or collecting agents for their employees — they are monies which, though described by Mr. Ruosch as solicited gratuities, are clearly monies demanded from clients — at least in the case of one hotel — on pain of eviction if they refused to pay. They accrue to hotel revenue in the first instance and the hotel decides — in the absence of industrial arbitration — how the amount collected should be distributed to its employees. To put it bluntly, it seems as clear as daylight that these so-called "voluntary" tips "solicited" as gratuities for employees are utilised to augment the wages paid to these employees under some colourable and more honorific title such as service charge distribution or take-home "package" when — to call a spade a spade —these payments are, in substance and in fact, part of the remuneration in money due to the employee in respect of his employment falling squarely within the meaning of "wages" as defined in section 2 of the Central Provident Fund Act.

The answers to the three questions in the originating summons are all in the affirmative.

Costs to the respondent.

Questions answered in the affirmative.

Solicitors: *Allen & Gledhill; Rodyk & Davidson.*

COMPTROLLER OF INCOME TAX v. S. & CO. (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Chua & Tan Ah Tah JJ.)

November 24, 1972]

[Singapore — Civil Appeal No. 31 of 1971]

Income Tax — Assessments based on known income — Set off of alleged losses not allowed — Failure to submit accounts for relevant years — Whether comptroller entitled to raise assessments based on known income without taking into account losses — Income Tax Ordinance (Cap. 166, 1955 Ed. Reprint 16 of 1966), s. 72.

This was an appeal against the comptroller's estimated assessments raised under section 72(3) of the Income Tax Ordinance on the taxpayer company for the years of assessment 1964 to 1968. The assessments were based on the known income of the company from some of the sources only and the comptroller had not allowed any set-off in respect of alleged losses by the company from its trading sources although these sources were known to exist for the relevant years. The comptroller claimed that as no accounts were submitted to him for the relevant years he was entitled to raise the assessments based on known income without attributing losses in respect of other sources in respect of which no accounts were submitted.

At the adjourned hearing before the Income Tax Board of Review the taxpayer did produce some accounts for the year of assessment 1964 only, but this the board found to be unreliable and inaccurate.

Held (by the board): in view of the facts in the case, the comptroller's assessments were correctly raised under section 72(3) of the Ordinance and the defendant had not discharged the onus upon them of proving that the assessments were excessive.

An appeal against the board's decision was heard by Kulasekeram J. and the only substantive point argued was whether in raising the estimated assessments in this case under section 72(3) the comptroller had exercised his best judgment since he had not taken into account the trading source of the appellant company.

Held (by the High Court) allowing the company's appeal: since the comptroller's representative had stated that only known sources of income were taken into account in raising the assessments, without assessing the taxpayer on his other sources, it was not the proper exercise of his best judgment as was required by section 72(3) and hence the assessments ought to be set aside with liberty to the comptroller "to raise fresh assessments in respect of the five years in question within the period of limitation".

The comptroller appealed against the decision of the High Court to the Court of Appeal.

Held (by the Court of Appeal) allowing the appeal: in order for a taxpayer to discharge the onus on him of proving that an estimated assessment is excessive he must not only be able to show that the comptroller has ignored certain sources. There is the further onus to show in what way it is excessive, and applying the *dicta* of Mr. Justice Buttrose in *A.B.C.* v. *Comptroller of Income Tax*[1] by what amount such assessment is excessive.

Dicta in *A.B.C.* v. *Comptroller of Income Tax*[1] followed.

Case referred to:-

(1) *A.B.C.* v. *The Comptroller of Income Tax* [1959] M.L.J. 162 at p. 166.

COURT OF APPEAL.

Amarjit Singh Verick for the taxpayer.

Sat Pal Khattar for the Comptroller of Income Tax.

[Before the Income Tax Board of Review, *Amarjit Singh Verick* appeared for the taxpayer and *Sat Pal Khattar* (*Cheah Cheng Hoc* with him) for the comptroller. On April 18, 1970 the following decision was delivered:]

Sinnathuray, Chairman: This appeal concerns the tax liability or otherwise of the appellant, a private limited company, for 5 years of assessment, namely, the years of assessment 1964 to 1968. The facts of the appeal are not very complicated and the issues of law reasonably straightforward that I can dispose of the appeal with the following oral grounds of decision.

The facts of the appeal are that on 22nd of August 1964, the Comptroller of Income Tax sent a notice to the appellant requesting it to furnish a copy of the accounts for the year ending 31st of December 1963, within 35 days from the date of service of the notice. On 26th of September 1964, Messrs. V. P. Kumaran & Co., the firm of accountants who acted as agents for the appellant, wrote to the comptroller stating that due to a strike that took place on 3rd of September 1963, and a fire on 13th of March 1964 that partly damaged the building where the appellant carried on its business and destroyed the goods and certain other things, the appellant was finding it difficult to finalise the accounts for the said year. They asked for some time to submit the accounts. On 2nd of October 1964, the comptroller again wrote to the agents for the appellant pointing out that accounts had not yet been submitted and that the comptroller was not satisfied that the delay in submitting the accounts was due to the strike and fire. It is not irrevelant to mention here